

ZONING BOARD OF APPEALS MEETING
JEFFREY GERHART – OCTOBER 17, 2012

The Zoning Board meeting was called to order by Chairman Mike DeWitt at 6:30 PM.

PRESENT: Mike DeWitt, Robert Dumke, Brian Schumacher, Tom Kirszenstein, CEO Joe Czechowski, Attorney Chris Trapp, Sue Galbraith, Secretary, Jeff and Caitlin Gerhart, and Mr. Carl Burkhardt.

ABSENT: Charles Gaffney

The purpose of the meeting is for a variance from section 210-19A of the Code of the Village of Alden as it pertains to the raising of poultry in a R-C Zoning District, where the raising of poultry is only an allowed use in a R-O Zoning District.

The Public Hearing portion of this variance was held on Tuesday September 18, 2012, and was tabled until this month when Attorney Trapp could be present. Chairman DeWitt explained there were five criteria that must all be met in order to approve a use variance.

MOTION by Brian Schumacher, seconded by Tom Kirszenstein, to resume the meeting. Carried.

The following five criteria were reviewed by the board.

1. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence:
Attorney Trapp felt this was not applicable in this situation; it applied more towards a business. **Passed.**
2. That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood:
ZBA felt this hardship was not unique, as it would apply to any property in an R-C District. and **failed** the criteria.
3. That the requested use variance, if granted, will not alter the essential character of the neighborhood:
Attorney Trapp referred to altering character as a value judgment, board member Kirszenstein felt it did not change the character; this applies more to a business or commercial enterprise. **Passed.**
4. That the alleged hardship has not been self-created:
At this point Caitlyn Gerhart addressed the board concerning an article in the NY Law Journal on NY Court of Appeals area variance criteria. Attorney Trapp explained a use variance and area variance are not the same and doesn't pertain. Caitlyn did not feel the codes are clearly written, Attorney Trapp explained that the codes are written by the Village Board, and advised she contact the Village Board to discuss the possibility of change the codes. CEO

Czechowski explained the property owner was given three options: 1. remove animals, 2. seek code change or 3. apply for use variance. Caitlyn feeling frustrated felt code was not written specifically enough, in which Attorney Trapp responded the code will not specifically identify each species of animals and the route to go would be address the Village Board to change the code. Master Plan is developed to enhance people lives and residences. ZBA feels this hardship is self created and also **fails**.

5. That it will not create a hazard to health, safety or general welfare. Such language shall be liberally construed to effectuate the best interests of the residents of the Village of Alden and to implement the zoning ordinances and master plan.

In this particular case the ZBA found no hazard to health, safety or general welfare. **Passed.**

MOTION by Brian Schumacher, seconded by Robert Dumke, to deny the variance due to failure to meet all of the required criteria.

Roll Call Vote: Chairman DeWitt	Aye
Robert Dumke	Aye
Brian Schumacher	Aye
Tom Kirszenstein	Nay

MOTION by Tom Kirszenstein, seconded by Brian Schumacher, to adjourn the hearing at 6:58 PM. Carried

I respectfully submit,

Sue Galbraith, Clerk
Zoning Board of Appeals